

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTSFILED  
NOV 18 2004

UNITED STATES OF AMERICA      )  
                                     )  
                                     )  
  vs.                            ) NO. 04-656-MAP  
                                     )  
  MICHAEL CROOKER            )

U.S. DISTRICT COURT  
DISTRICT OF MASS.

## DEFENDANT'S MOTION TO DISMISS

Now comes the Defendant in the above entitled matter pursuant to Fed. Rules Crim. Pro. Rule 12 and respectfully requests this Honorable Court dismiss the above action. As grounds for this request the Defendant asserts that United States Code Title 18 sec. 922 (g) is unconstitutionally vague both as applied to him in the factual context of this case and also on its face and that a conviction thereunder would be violative of his rights under the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution and equally violative of his rights under the second and eighth amendments.

This statute and its component parts are vague and overbroad because the enforcement thereof depends upon a completely subjective standard in defining all of the key terms in the statute, constituting a broad invitation to discriminatory enforcement, failing to provide persons of ordinary intelligence a reasonable opportunity to know what is prohibited and impermissibly delegating basic policy matters to policemen and juries for resolution on an ad hoc and subjective basis resulting in arbitrary and discriminatory applications. *See Graynard v. City of Rockford*, 468 U.S. 104 (1972).

More specifically it is asserted that Title 18 U.S.C. sec. 922 (g) and the language and terms setting forth the essential elements of this crime as those terms are defined by Title 18 U.S.C. sec. 921 (a) 3 (c) and (a) 24 are vague and overbroad.

Wherefore, the Defendant claims the Statute complained of is vague on its face and as

applied to him in the context of this case, results in cruel and unusual punishment is violative of defendant's rights to due process and equal protection and should accordingly be dismissed.

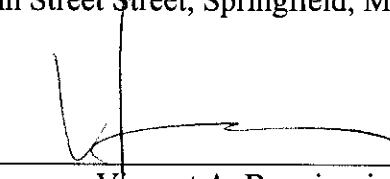
THE DEFENDANT

By: 

Vincent A. Bongiorni, Esq.  
BBO #049040  
95 State Street  
Springfield, MA 01103  
Tel. (413) 732-0222  
Fax. (413) 746-4971

CERTIFICATE OF SERVICE

I, Vincent A. Bongiorni, Esq., hereby certify that I have caused a true copy of the within document to be served upon Assistant United States Attorney, Arianne Vuono, Esq., United States District Court, by mailing to 1550 Main Street Street, Springfield, MA 01103, this 17th day of November, 2004.

  
Vincent A. Bongiorni, Esq.